



King County

Metropolitan King County Council

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May 26, 2006

TO: Metropolitan King County Council

FROM: Stafford Smith
King County Hearing Examiner

RE: Hearing Examiner Recommendation to the Metropolitan King County Council on Redmond Ridge East Remand and Phased Approval Options

I. PROCEDURAL BACKGROUND

On February 22, 2005, the public hearing was opened on the Redmond Ridge East urban planned development (UPD), fully contained community (FCC) and preliminary plat applications. Redmond Ridge East proposes to add up to 800 new units of residential development on a 337 acre parcel lying south of Novelty Hill Road within the Novelty Hill UPD complex. Redmond Ridge East is the third of three contiguous and interrelated UPD applications, the previously approved components being the Redmond Ridge UPD/FCC and the Trilogy UPD. Collectively the three UPD projects would be authorized to construct a maximum of 4,750 dwelling units on approximately 2,434 acres. In addition to reviewing the Redmond Ridge East permit applications, the 2005 hearing also entertained challenges by the City of Redmond and Friends of the Law to the adequacy of the project EIS and by FOTL to the validity of the project traffic concurrency certificates.

The Hearing Examiner issued his report and recommendation on Redmond Ridge East on June 28, 2005, proposing that the County Council deny the RRE permits based on defects within the residential traffic concurrency certificate and a determination that the project would create unmitigated adverse traffic impacts in Redmond at the Union Hill Road/Avondale Road intersection and within the Avondale corridor north of the intersection. The RRE Final EIS was also found to be deficient based on its failure to analyze the adverse impacts to rural character and rural roads south of the project area resulting from diversion of commuter traffic from Novelty Hill Road via the proposed C-2 road connector between Redmond Ridge East and Redmond Ridge. At the beginning of the hearing, the C-2 connector was being touted by county staff as a mitigation option but at that point was largely unsupported by the RRE applicant. By the end of

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the hearing, however, the C-2 road connector had evolved into an essential component of the Quadrant proposal.

Timely appeals of the Examiner's June 28, 2005, report and recommendation were filed by the applicant, Quadrant Corporation, and by two county departments, Transportation and Development and Environmental Services. Respondents to the appeal were the City of Redmond and one local citizen. The neighborhood group who had opposed the RRE permits at the public hearing, Friends of the Law, neither appealed nor responded to the appeals.

An order issued by the Hearing Examiner on October 26, 2005, authorized a limited reopening of the Redmond Ridge East hearing record to document changes in the status of the applications and to clarify certain traffic modeling data. A November 30, 2005, supplemental report documented Quadrant's withdrawal of its FCC application and a settlement agreement between Quadrant and FOTL that contained a provision for altering the RRE perimeter buffer.

The County Council held RRE appeal hearings on December 5th and 7th, 2005, and on the 7th continued the hearing to allow for further review of appeal documents. A letter from the Council Chair dated December 16, 2005, invited the Hearing Examiner to explore the possibility of reaching agreement among the appeal parties on consensual terms for remanding the RRE proceeding back to the Examiner for further review. A January 5, 2006, notice issued by the Examiner upon consultation with Prosecuting Attorney's Office staff set out a process for pursuing remand settlement negotiations to be mediated by Deputy Examiner Pete Donahue.

The remand negotiations were originally expected to be concluded rather quickly but evolved into a lengthy negotiation over terms for a phased approval of Redmond Ridge East. These negotiations were concluded on April 7, 2006, when a 23-page agreement plus 14 pages of attachments were forwarded to the Hearing Examiner. Under the terms of the January 5, 2006, remand notice the Examiner was availed a brief opportunity to comment upon the settlement agreement and to propose amendments thereto. A letter proposing such amendments was mailed to the attorneys for the appeal parties on April 13, 2006, but the suggested changes were not accepted by the parties. This memorandum provides the Hearing Examiner's analysis of the settlement agreement as well as various alternative proposals for resolving the instant appeal which the Examiner believes better serve the public interest.

II. ELEMENTS OF THE SETTLEMENT AGREEMENT

The parties to the settlement agreement dated April 7, 2006, are the applicant, the Quadrant Corporation; the City of Redmond; the King County Executive and the King County Departments of Transportation and Development and Environmental Services. All the signatories except the King County Executive are also parties to the pending Redmond Ridge East appeal. A second respondent to the Council appeal, Walter Walker, declined to further participate in the settlement agreement process after attending the initial meeting.

The four pages of recitals within the settlement agreement essentially concern themselves with providing a basic description of the Redmond Ridge East application process and a recent history of the Novelty Hill Road CIP project. The current status of the CIP is that a federal EIS under the National Environmental Policy Act is being prepared. The stated expectation is that a draft EIS will be issued in March 2007, a preferred alternative selected by June 2007, a final EIS issued in June 2008 and project construction will begin near the end of 2009.

The substantive agreements within the document can be sorted into three categories. First, there are provisions for the phased approval of 550 units of Redmond Ridge East housing based on

triggers linked to the Novelty Hill Road CIP process. Second, there are provisions for additional mitigation payments to be made by Quadrant to the City of Redmond for improvements at the SR-202/Northeast 124th Street intersection near the City's northern boundary and for future annexation of that portion of the roadway into the City. Finally, the agreement prescribes a variety of political commitments to continued future CIP funding and for mutual cooperation between Redmond and the County regarding extension of light rail service to Redmond and future SR-520 improvements. Also within the category of political provisions one would likely include a rather curious attempt at behavior modification to "govern and control Redmond's future conduct and speech regarding RRE."

At the heart of the agreement are the provisions for additional mitigation payments to Redmond and for phased construction of RRE housing. Of the 800 units proposed, under the settlement agreement 250 units will be subject to immediate construction after the Council confers project approval, another 150 will be constructed after the final EIS for the Novelty Hill CIP project is published, a further 100 will be built if the following year's CIP still contains construction funds for the Novelty Hill project, and the final 300 become eligible for approval after a construction contract for the Novelty Hill CIP is executed.

III. STRENGTHS AND WEAKNESSES OF THE SETTLEMENT AGREEMENT

The primary argument for Council adoption of the settlement agreement and approval of RRE subject to its terms is derived from the simple fact that the agreement exists. The City of Redmond has been at loggerheads with both Quadrant and the County's transportation bureaucracy for more than ten years due to the City's perception that the traffic impacts from Novelty Hill UPD development are not being adequately mitigated. The Hearing Examiner's June 28, 2005, report and recommendation, which is the subject of the current appeal, essentially adopted Redmond's viewpoint in proposing denial of Redmond Ridge East based on unmitigated impacts to the Avondale Road/Union Hill Road intersection and the adjacent Avondale corridor, both within the City of Redmond.

For the City to reach an accord with Quadrant and KCDOT over anything at all relating to Redmond Ridge East is an accomplishment of some magnitude regardless of whatever substantive defects the agreement may contain. Moreover, the agreement has the obvious attraction of eliminating the possibility for further litigation over Redmond Ridge East if the Council adopts it. Therefore, while one may entertain concerns that the settlement agreement does not actually solve the long-term traffic mitigation problems attendant to Novelty Hill UPD development, in the short term the adoption of the agreement at least makes these problems disappear. And this fact alone may prove sufficient to convince the Council that embracing the settlement agreement is a desirable choice.

A. The missing stakeholders

Although achieving peace between Quadrant and the City of Redmond is a notable accomplishment, the most significant fact about the settlement agreement process is not who participated but who was missing. Quadrant's comprehensive resolution of Novelty Hill UPD issues last August with Friends of the Law removed from the project review equation the participation of any group specifically committed to protecting the interests of the Rural Area residents who live in the vicinity of the UPDs. The only party to the settlement agreement negotiations substantially motivated to represent citizen interests was the City of Redmond, which was understandably focused on impacts to its own transportation facilities.

Thus, while one of the primary criticisms of the RRE proposal leveled within the Hearing Examiner's June 28, 2005, recommendation was that the proposed C-2 connector between Redmond Ridge and Redmond Ridge East would siphon commuter traffic away from Novelty Hill Road and the UPDs and divert it south to rural portions of the Union Hill corridor (and that such impacts had neither been identified nor mitigated), the settlement agreement mandates approval of the C-2 connector without further analysis or impact mitigation. The only reason this could happen was that none of the parties at the table were representing the interests of the Rural Area residents within the Union Hill neighborhood south of the UPDs.

To state the matter in its most basic terms, if the interests of rural residents are going to be protected within the RRE process against potentially overwhelming commuter hour traffic impacts from vehicles diverted through their neighborhoods, it will be the task of the County Council to provide that protection. No one else is going to do it.

B. The missing information

The settlement agreement invites the County Council to approve Redmond Ridge East in the absence of the following critical information which is necessary to evaluate the adequacy of proposed traffic mitigation measures:

- The identification of the Novelty Hill Road CIP project preferred alternative and its cost.
- The specification of the Novelty Hill Road CIP Phase I project and its cost.
- Whether the current level of CIP funding will be sufficient to construct the Novelty Hill Road Phase I project.
- Whether Phase I of the Novelty Hill Road CIP by itself will actually provide adequate mitigation for cumulative UPD traffic impacts beyond the immediate locale of the Novelty Hill Road UPD frontage.
- The extent to which the combination of WSDOT SR-202 and SR-520 improvements, City of Redmond capacity upgrades to the Avondale Road/Union Hill Road intersection, and construction of the C-2 road connector will operate to divert UPD and pass-through commuter traffic from the Novelty Hill Road corridor south to the rural neighborhoods and roads in the Union Hill area.
- The diversionary effects of building the C-2 road connector before the Novelty Hill Phase I CIP has been completed and its attendant construction-related capacity impacts are past.
- Identification of what mitigation benefits to RRE, if any, will result from construction of the lane-widening improvements at the SR-202/Northeast 124th Street intersection newly proposed within the settlement agreement.

These unknown variables affect every aspect of the traffic mitigation concepts proposed for RRE. To approve RRE unconditionally in the absence of such fundamentally critical information is to act solely on the basis of speculation and wishful thinking.

C. Mitigation approaches: Hope versus certainty

Because the traffic mitigation assumptions for Redmond Ridge East remain highly speculative due to the existence of unknown variables affecting every critical issue, a rational approach to a phasing decision for construction of Redmond Ridge East housing must be based on the best available information and employ conservative future projections. The settlement agreement does not embody a conservative approach but rather compounds the existing uncertainty with untenable assumptions about how such variables may ultimately be resolved.

First, the settlement agreement assumes without any supporting documentation or analysis that the dollar figures currently within the 2006 CIP for the Novelty Hill project no. 100992 will be sufficient to construct the Phase I CIP improvement. However, even the most cursory review of the history of project no. 100992 demonstrates how improbable that assumption is. The 2001 adopted CIP, which adopted estimates based on then-prevailing construction costs, provided \$42,603,000 in total project funds, with \$30,608,000 allotted to project construction. By comparison, the 2005 CIP for the same project authorized \$33,280,000 in total project funds and only \$17,881,000 for construction. The CIP adopted for 2006 reduced the total funding nearly another million dollars and the construction allocation more than 1.2 million dollars. Thus, after adjustment for inflation the construction commitment to the Novelty Hill Road project within the 2006 CIP is approximately one-half of the amount allocated in 2001. Unless one determines that the figures within the 2001 CIP were wildly inflated, it cannot be seriously argued that the construction allocation within the 2006 CIP will come anywhere close to building the Phase I Novelty Hill facility.

Second, for the settlement agreement to work as proposed, it becomes necessary to assume that before the end of 2009 the NEPA draft and final EISs will be issued, the preferred alternative selected, the Phase I project designed and permitted, and a construction contract awarded. Based on this rapidly paced schedule, the settlement agreement authorizes construction of 500 units of housing in RRE before the CIP construction contract is actually awarded. Since the award of the construction contract is really the first point at which the County's commitment to the project will become irreversible, the question arises whether the history of the Novelty Hill CIP warrants the optimistic timeline assumptions recited within the settlement agreement.

It seems that no one currently at KCDOT actually remembers when the Novelty Hill CIP was first adopted, but the common understanding appears to be that it dates back to the mid-1990s. If that is so, then for the project to reach its present status its construction date necessarily has been ritually postponed through at least 10 consecutive annual CIP cycles. An initial draft EIS for the Novelty Hill CIP was issued by KCDOT around the year 2000 and abandoned soon thereafter. The current NEPA EIS now proposes to look at a much broader range of project alternatives, which suggests that the debate over selecting the preferred alternative may not be short and harmonious. Moreover, the Department's recent commitment to the lengthy and complicated federal EIS process is a tacit admission that nobody at KCDOT seriously believes that the project can be constructed without federal money.

In view of the foregoing, the projected contract award date of late 2009 will probably prove to be unduly optimistic, and if it is, under the settlement agreement 500 units of Redmond Ridge East housing will have been built without the necessary supporting mitigation measures forthcoming. Phasing of Redmond Ridge East housing construction, if it is to be rationally coordinated with the provision of essential transportation facilities, must be deferred at least until the Phase I CIP construction contract is awarded, the first point at which the financial commitment to the CIP project becomes irreversible.

The third question that needs to be asked with respect to the settlement agreement is whether all of the various political assurances that are hung on the document like ornaments on a Christmas tree actually operate to guarantee that the Novelty Hill CIP will stay on schedule. The answer to that question is, unfortunately, no. While Council motions and executive press conferences may temporarily raise the profile of the Novelty Hill CIP project, all that ultimately matters is the level of CIP commitment in the year when the first construction contract is awarded. In 2004 the County Executive during a period of budget shortfall proposed severely reducing the level of funding for the Novelty Hill Road CIP, and if another true budgetary emergency were to occur the Novelty Hill Road CIP will again necessarily fall to a lower priority status.

To take but two obvious and widely discussed examples, if the County were to suffer either a major earthquake or a pandemic flu crisis all available resources would be properly marshaled to respond to the emergency regardless of prior representations. Conversely, if no emergency occurs and the Puget Sound economy continues to be healthy, the CIP commitment will likely endure. But in either case the robust expressions of political support mandated by the settlement agreement will neither increase nor decrease the probability of funding for the project. What is more, if the actual cost of the Phase I CIP project exceeds current CIP funding levels, as it seems likely to do, the big question will be whether the County will commit to the additional capital funds required to build the project. This is an issue which the settlement agreement makes no attempt to address.

Finally, with respect to the settlement agreement terms it is necessary to assess whether Quadrant's commitment to fund a new Redmond capacity improvement at the SR-202/Northeast 124th Street intersection will provide significant mitigation benefits to Redmond Ridge East. The basic concept behind this improvement is that with the Redmond segment of Avondale Road north of its Union Hill Road intersection already constructed to its maximum width and subject to gridlock congestion, the City needs to provide alternative routes to convey commuter traffic west to the I-405 corridor. The proposed improvement is envisioned as removing a currently-existing bottleneck that constricts traffic flow on Northeast 124th Street between Avondale and I-405 at Totem Lake.

While the proposed improvement on Northeast 124th Street at its SR-202 intersection will no doubt provide a needed upgrade to the regional road system as it serves Redmond overall, there appears to be no case to be made that this upgrade will provide significant mitigation for Redmond Ridge East traffic impacts. The RRE EIS traffic study documents analyzed traffic impacts at 34 study intersections, none of which are anywhere near SR-202/Northeast 124th Street. In point of fact, the only EIS study intersections lying north of Novelty Hill Road are a handful of locations along the backdoor route to Trilogy on the Northeast 133rd Street corridor, all east of Avondale Road.

The only Redmond Ridge East EIS information that is at all relevant to this newly proposed intersection mitigation are some generalized traffic distribution maps which show a 5 percent RRE residential trip distribution on Northeast 128th Street west of Avondale with construction of the Novelty Hill Road CIP and a 7 percent distribution without the CIP. Based on a universe of approximately 700 project peak hour trips, this translates to a maximum of 50 RRE trips to the intersection without the Novelty Hill Road CIP and 35 trips with the CIP. Since for this scenario the 20 percent Intersection Standards threshold for mitigation would be 140 RRE peak hour trips, it is clear that the distribution of RRE traffic to the SR-202/Northeast 124th Street intersection falls far below IS standards for requiring mitigation. While the City has also suggested that the proposed improvement may have the effect of siphoning off non-UPD commuter traffic that otherwise might compete with RRE vehicles for capacity within the Avondale corridor, no studies have been submitted that document this assumption. Again, this is not to say that within a broader regional context Redmond's proposed improvement is not a worthwhile transportation project, but simply that its relationship to Redmond Ridge East traffic impact mitigation is marginal at best.

IV. ALTERNATIVES TO THE SETTLEMENT AGREEMENT

If as suggested above the settlement agreement is unduly optimistic in its assumptions, what then are the responsible alternatives available to the Council at this point in the process? The discussion provided below assumes that the Council is not presently disposed to decide the appeal on its merits and thereby either simply deny or approve the Redmond Ridge East proposal in its

current form. This appears to be a reasonable posture in light of Quadrant's settlement with FOTL, which effectively eliminated from the review process any group categorically opposed to further UPD construction. In the absence of such opposition, the critical issues with respect to RRE can be justifiably viewed primarily as matters of development timing.

A. Remand to the Hearing Examiner

In view of the myriad unknown variables that still surround the definition, design, funding, construction and mitigation value of the proposed Novelty Hill CIP project, arguably the most responsible action for the Council to take is to simply remand the application back to the Hearing Examiner for further hearings in the manner suggested by the Chair's December 16, 2005, letter. This would be a non-appealable interlocutory action and provide the broadest framework for responding to new information as it develops. Its primary disadvantage is that the Hearing Examiner's remand report and recommendation later would be appealable to the Council in the same manner as the current report, and therefore a Council appeal decision would not be eliminated but likely only deferred. On the other hand, the remand hearing would be triggered by completion of the Novelty Hill CIP environmental review process, presumably leaving fewer complex issues to argue over. A motion remanding Redmond Ridge East to the Hearing Examiner for further review at the time a final EIS for the Novelty Hill Road CIP is issued is appended to this memorandum as Attachment A.

B. RRE phasing based on future approval of the Novelty Hill Road CIP and review of its actual mitigation effects

As an alternative to the remand proposed above, a complete and adequate response to the Novelty Hill Road CIP and its effects in providing mitigation to Redmond Ridge East can be achieved by means of a current approval of RRE that imposes phasing requirements on housing construction. Attachment B to this memorandum is a proposed new condition 1.5 to the Redmond Ridge East UPD permit that would provide for project phasing based on a traffic study performed after the Novelty Hill Road CIP Final EIS is published. Based on a hearing to review that study, the construction of all 800 units of RRE housing would be phased so that the addition of new UPD vehicular traffic to the arterial system would occur at the time when adequate transportation facilities to accommodate such traffic actually would be available. This approach has the advantage of conferring overall project approval presently with future review limited to a specified menu of issues. As described within proposed condition 1.5.4, the updated traffic study would be subject to review within a Hearing Examiner proceeding and result in a phasing decision that could be appealed to the County Council. Alternatively, the Hearing Examiner's phasing decision could be designated a final decision and further appeal to the Council eliminated.

A project phasing process that provides current project approval and authorizes infrastructure development but subjects construction of all 800 units of RRE housing to the updated traffic study and the resultant phasing decision can be implemented by adopting condition 1.5 shown in Attachment B, excluding condition 1.5.5 (Minimum Housing Units) which is shown in italics. Condition 1.5.5 only applies to the modified phasing option described below in subsection C.

C. RRE phasing based on future CIP approval and review with a component for authorizing housing units based on reliable mitigation triggers

The fundamental criticism of the settlement agreement is that it authorizes construction of more than 50 percent of RRE housing based on considerations that do not guarantee the timely construction of the Novelty Hill CIP project. A compromise approach that the Council may wish

to adopt would be to confer some level of recognition on Redmond's newly achieved harmony with Quadrant and the King County executive departments represented by the settlement agreement but also take prudent action to assure that the phasing of Redmond Ridge East housing will be based on the provision of meaningful mitigation. Attachment B below, including the italicized provisions of condition 1.5.5, attempts to achieve this balance. It authorizes construction of 200 dwelling units in RRE at the time the County enters into a contract for the construction of Phase I improvements under the Novelty Hill Road CIP and another 200 units if Quadrant has implemented an agreement with the City of Redmond for the improvements planned at the SR-202/Northeast 124th Street intersection. Under this scenario the remaining 400 units of RRE housing would be subject to the requirements of the phasing decision.

The arguments in favor of this approach are that it provides recognition for the achievements of the settlement agreement while employing meaningful triggers to authorize construction of up to 400 dwelling units; it reserves the remaining units to be phased according to the findings of an updated traffic study to assure that housing construction will not outpace required transportation infrastructure; and it provides a flexible process to structure RRE development so that commuter traffic will not be diverted south from Novelty Hill Road to impact the rural character and rural roads in the Union Hill area.

V. SUMMARY

While the accord reached by the parties to the appeal within their settlement agreement is praiseworthy from the standpoint of harmonizing conflicting interests, its fundamental shortcoming derives from the absence of effective representation for the interests of the Rural Area residents who live adjacent to the Novelty Hill UPDs and whose legitimate needs are not addressed by the agreement. A second major shortcoming is that the settlement agreement assumes that the Novelty Hill CIP project will guarantee effective traffic mitigation for RRE at a point in the CIP process when the fundamental structure and timing of the CIP is still unknown. Finally, it implicitly assigns to a newly proposed traffic improvement on Northeast 124th Street at the northern border of Redmond a beneficial mitigational effect that is unsupported by existing RRE environmental documents.

The most responsible action for the Council to take is either to remand Redmond Ridge East to the Hearing Examiner under the terms stated in Attachment A or to confer approval subject to the phasing plan provided in Attachment B, minus the minimum housing units terms stated in condition 1.5.5. Alternatively, if the Council wants to provide a level of recognition to the settlement agreement, project approval may be conferred subject to the phasing conditions stated in condition 1.5 in Attachment B, including the minimum housing unit provisions of condition 1.5.5.

SLS:ms

L02UPD01 & L03P0003 5-06 mem

- Att. A – Motion remanding Redmond Ridge East to the Hearing Examiner
B – Proposed permit condition 1.5 phasing requirements
C – Substitute ordinance for phased UPD approval with revised findings and conclusions
D – April 13, 2006, Hearing Examiner letter to settlement parties
E – City of Redmond responses to Hearing Examiner questions about SR-202/Northeast 124th Street improvement project